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10 UNITED STATES BANKRUPTCY COURT
11 EASTERN DISTRICT OF CALIFORNIA

12 In re

13 Michael Alan Kellogg and Laura Jean
14 Kellogg; AKA Mike Kellogg; DBA
15 Kellogg Environmental, Inc. DBA
16 Environmental Systems; FDBA Ron's
17 Water Truck Inc.,

18 Debtors.

Case No. 12-92576
Chapter 7 Case
D.C. NO. ADJ-3

Hearing

Date: May 2, 2013
Time: 10:30 a.m.
Location: 1200 I Street, Suite 4
Modesto, California

19 _____ /
20 **MOTION FOR AUTHORIZATION TO SELL PERSONAL**
21 **PROPERTY TO DEBTORS**

22 Michael D. McGranahan, the trustee of the Chapter 7 bankruptcy estate (the
23 "Trustee") in the above-captioned case, hereby moves the court for an order authorizing
24 him to sell one (1) 2005 Ford F-250 Extended Cab XLT Truck, VIN: 1FTNX20535EB56245
25 (the "Truck"), which is property of the bankruptcy estate, to Michael Alan Kellogg and
26 Laura Jean Kellogg (the "Debtors"):

27 1. On September 28, 2012, the Debtors filed a voluntary petition under Chapter 7
28 of Title 11, United States Code. The Trustee was appointed interim trustee in the Case

Motion for Authorization to Sell Personal
Property to Debtors

1 on September 28, 2012, and thereafter became permanent trustee, a position the
2 Trustee continues to hold.

3 2. This motion seeks authority to sell property of the estate out of the ordinary
4 course of business pursuant to 11 U.S.C. § 363 (b)(1).

5 3. There are no liens encumbering the Truck. The Truck is subject to a debtor
6 exemption in the amount of \$2,500.00 pursuant to California Code of Civil Procedure
7 Section 703.140(b)(2) (the "Exemption").

8 4. Authority for this motion to sell the asset is found in 11 U.S.C. § 363(b)(1): "The
9 trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary
10 course of business, property of the estate . . . " The Truck is property of the estate. Selling
11 a vehicle is not in the ordinary course of business in this case.

12 5. The Trustee has entered into the Purchase and Sell Agreement with the Debtors
13 whereby the Debtors have agreed to purchase the Truck for \$10,000.00 (the "Purchase
14 Price"). A copy of the Purchase and Sell Agreement is filed as EXHIBIT "A" in support of
15 this motion. The Purchase Price will be paid as follows:

16 a. The Trustee will credit the Debtors in the amount of \$2,500.00, which is
17 equal to the claimed Exemption; and

18 b. The Debtors have deposited \$7,500.00 with the Trustee, which will be
19 applied to pay the remaining balance of the Purchase Price upon the closing
20 of the sale and purchase of the Truck.

21 (The net cash purchase price, after application of the credit for the exemption, is
22 \$7,500.00 (Purchase Price of \$10,000.00 - Exemption amount of \$2,500.00 = \$7,500.00).)

23 6. The Trustee personally inspected the Truck. The Trustee believes that the fair
24 market value of the Truck is \$10,000.00. The Trustee believes that a sale back to the
25 Debtors is in the best interest of creditors and will bring the best possible price. The
26 Trustee would incur the expense of a commission if the Truck were sold by auction.

1 7. If a higher bidder is successful at the hearing on this motion, the successful
2 bidder will be responsible for preparing any purchase agreement, on the terms set forth in
3 Paragraph 9, below.

4 8. Notice of the proposed sale of the Property shall be made pursuant to Federal
5 Rule of Bankruptcy Procedure 6004(a). Notice is not required under subsection 7A of the
6 Clayton Act; thus, the notice of provisions of 11 U.S.C. § 363(b)(2) do not apply. Notice of
7 the proposed sale of the property shall also be made pursuant to Local Rule 9014-1(f)(2).

8 9. If any prospective bidder wishes to make a higher offer in the form of a bid for
9 the Truck, the Trustee respectfully requests the following requirements: At least seven
10 days prior to the hearing date on this motion, a prospective bidder must (1) contact the
11 Trustee; (2) provide the Trustee a cashier's check, drawn on a California bank, in an
12 amount equal to or greater than \$1,000.00; and (3) sign a contract which is identical to the
13 Purchase and Sell Agreement between the Trustee and the Debtors, except for the
14 purchase price, which will be determined through bidding at the hearing on this motion,
15 and except the bidder will not receive a credit on the Purchase Price for the Exemption.
16 The Trustee recommends a minimum opening bid of \$10,500.00, with minimum
17 incremental bids of \$100.00. The Debtors and any bidders must be present at the hearing
18 on this motion.

19 10. The Trustee respectfully requests the court to waive the 14 day stay provision
20 of Federal Rule of Bankruptcy Procedure 6004(h) so as to allow the sale of the Truck
21 immediately upon entry of an order.

22 WHEREFORE, the Chapter 7 Trustee, prays for an order of this Court:

23 1. Authorizing the sale of the Truck for the sum of \$10,000.00 on the terms
24 outlined in the Purchase and Sell Agreement filed herewith as EXHIBIT "A" (including but
25 not limited to approval of the Trustee's application of a credit in the amount of \$2,500.00
26 toward the Purchase Price for the Exemption, for a net cash purchase price of \$7,500.00),
27 assuming there is no better offer presented at the hearing on this motion; or
28

1 2. Authorizing the sale of the Truck to any party which presents a better offer at the
2 hearing on this motion, in accordance with the terms of Paragraph 9 of this motion;

3 3. Authorizing, if the Debtors are out bid and a third party purchases the Truck, the
4 return to the Debtors of any and all deposits;

5 4. Authorizing the Trustee to execute all documents which are necessary or
6 convenient to complete the transaction;

7 5. Waiving the 14 day stay provision of Federal Rule of Bankruptcy Procedure
8 6004(h) so as to allow the sale of the Truck immediately upon entry of an order; and

9 6. Such further relief that the Court deems proper.

10 Dated: April 11, 2013

11 Respectfully submitted,

12 /s/ Anthony D. Johnston

13 Anthony D. Johnston
14 Attorney for Trustee,
Michael D. McGranahan